IN THE SUPREME COURT OF IOWA

No. 48 / 98-1817

Filed April 26, 2000

BYRON P. CLEMENTS and **MARK W. CLEMENTS**,

Appellants,

Filed April 26, 200
Clerk Supreme Court

vs.

GAMBLERS SUPPLY MANAGEMENT COMPANY and **SODAK GAMING IOWA, INC.** a/k/a **SODAK GAMING, INC.**,

Appellees.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

Licensed ship captains who sued riverboat casino company for retaliatory discharge under state law theory appeal from adverse judgment challenging district court's conclusion that state law claims were preempted by federal maritime law. **REVERSED AND REMANDED.**

Timothy S. Jacobson of Parke O'Flaherty, Ltd., La Crosse, Wisconsin, and Deborah Hughes, Cedar Rapids, for appellants.

E. David Wright and Christopher R. Paar of Norman, Gilloon, Wright & Hamel, P.C., Dubuque, for appellees.

Considered en banc.

CARTER, Justice.

Byron P. Clements and Mark W. Clements, licensed ship captains employed by the management company for a riverboat casino in Marquette, Iowa, appeal from adverse judgment in an action seeking damages for wrongful discharge. The district court dismissed their claims, premised on state law, because it concluded that those state law claims were preempted by federal maritime law. After reviewing the record and considering the arguments presented, we disagree with the district court's conclusion. That judgment is reversed.

Byron and Mark Clements were employed by defendant Gamblers Supply Management Company (Gamblers Supply) commencing in 1994. Byron was the director of maritime operations, and Mark was the manager of marine operations. Both Byron and Mark

were licensed captains. Gamblers Supply operated a casino on the Miss Marquette Riverboat. At the time of the Clements' employment, the riverboat was required to leave the dock a certain number of times per year.

When the summary judgment motion papers are viewed most favorably towards the plaintiffs, it appears that Bvron and Mark discovered that their employer was violating various federal laws and regulations regarding inspection and repair of the riverboat. They confronted the management about these violations and indicated that they were concerned about the safety of the passengers and did not want to jeopardize their captains' licenses. In September 1995 Byron informed the riverboat management that he would not cooperate in structural modifications that would affect the boat's stability in the absence of express Coast Guard approval. The management expressed disapproval of his decision and terminated his employment on October 2, 1995. Mark's employment was terminated on June 28, 1996.

Byron and Mark filed petitions against Gamblers Supply and its parent company, defendant Sodak Gaming, alleging state law claims for wrongful termination. They contended they were terminated because they refused to violate federal safety regulations. The district court granted defendants'

motion for summary judgment on the basis that the plaintiffs were "seamen" and that federal maritime law preempted their state law claims. On appeal the Clements contend that the district court incorrectly decided the preemption issue and that Congress did not intend to preempt all state law claims by maritime employees.

In granting summary judgment, the district court relied on three decisions of federal courts. These were *Meaige v. Hartley Marine Corp.*, 925 F.2d 700 (4th Cir. 1991); *Garrie v. James L. Gray, Inc.*, 912 F.2d 808 (5th Cir. 1990); and *Feemster v. BJ-Titan Services Co.*, 873 F.2d 91 (5th Cir. 1989). The Clements urge that two of the three cases relied on by the district court, *Garrie* and *Feemster* involve wrongful discharge claims under federal law. Those cases do not purport to foreclose related state law claims on a preemption theory. The Clements further argue that, although the *Meaige* decision does recognize the preemption of state law wrongful discharge claims based on a policy of uniformity in maritime litigation, this legal conclusion does not represent and is inconsistent with the current federal law of preemption.

We agree that the *Garrie* and *Feemster* cases pertain to issues involving a seaman's right to recover under federal law and do not speak to the preemption issue. *Meaige*, on the other hand, does speak to the

issue of preemption of state law claims. After upholding the dismissal of the plaintiff's wrongful discharge claim under federal maritime law, the court in *Meaige* addressed his companion state claim as follows:

> We also affirm the district court's judgment dismissing appellant's action for failure to state a claim under West Virginia common law . . . . Appellant and the district court failed to recognize the exclusive nature of federal admiralty law....
> . . . In this case, there is a body of federal maritime jurisprudence relating to wrongful discharge, and turning to West Virginia for the rule of decision would clearly undermine uniformity in federal admiralty law.

Meaige, 925 F.2d at 702-03.

The Clements urge that the *Meaige* court's reliance on the need for a uniform maritime law as the primary basis for its conclusions extends the need for uniformity too far. They rely on the views on uniformity expressed in *Ellenwood v. Exxon Shipping Co.*, 984 F.2d 1270 (1st Cir. 1993). In that case, the court, while considering whether a discharged seaman could premise a claim under a state

employment discrimination statute, rejected the employer's argument that application of state law would defeat uniformity in federal maritime litigation. The court dealt with that issue as follows:

> Once again, however, Exxon heralds the need for uniformity without an appreciation for the boundaries of its relevance. All state laws, if given effect in admiralty cases, will interfere to a degree with the uniformity of admiralty law. But when Congress established a separate admiralty jurisdiction and empowered the judiciary to develop substantive maritime principles for use nationwide, it simultaneously, assured that state law would continue to play some role in maritime affairs through the "saving to suitors" clause. This provision allows plaintiffs to pursue, in addition to maritime relief, ordinary civil remedies provided by state law, so long as they do not conflict with the national substantive maritime law.

Ellenwood, 984 F.2d at 1279 (citations and footnotes omitted).

The "saving to suitors" clause referred to in the *Ellenwood* opinion had its genesis in the Judicial Act of 1789 and is currently codified as follows in 28 U.S.C. § 1333(1):

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

In *American Dredging Co. v. Miller,* 510 U.S. 443, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994), the Supreme Court recognized that the consequence of exclusive federal jurisdiction in maritime matters is that states may not provide a remedy in rem for any cause of action within admiralty jurisdiction. *American Dredging Co.,* 510 U.S. at 446-47, 114 S.Ct. at 985, 127 L.Ed.2d at 293. In exercising in personam jurisdiction, however, the Court recognized that, under the "saving to suitors" clause, a state court may adopt such remedies and attach to them such incidents as it sees fit so long as it does not attempt to make changes in the substantive maritime law. *Id.* at 447, 114 S.Ct. at 985, 127 L.Ed.2d at 293. In speaking of the need for uniformity, the Court indicated that the requirement of uniformity is not

absolute. The Court indicated that, while state law must yield to the needs of a uniform maritime law, this limitation still leaves the states a wide scope. *Id.* at 451-52, 114 S.Ct. at 987, 127 L.Ed.2d at 296. The *American Dredging Co.* decision expands the areas in which state laws may be imposed beyond the rigid dictum of this court in *Pfeiffer v. Weiland,* 226 N.W.2d 218, 220 (Iowa 1975).

The *Meaige* opinion on which the district court relied suggests that the "body of federal maritime jurisprudence relating to wrongful discharge" is an impenetrable body of law that fails to recognize a remedy for termination of employment as retaliation for an employee's assertion of concern for the safety of a ship and its passengers. We do not read the federal cases in this light. Federal courts have recognized a maritime common-law cause of action for wrongful discharge. *Smith v. Atlas Off-Shore Boat Serv., Inc.,* 653 F.2d 1057, 1063 (5th Cir. 1981); *Seymore v. Lake Tahoe Cruises, Inc.*, 888 F. Supp. 1029, 1035 (E.D. Cal. 1995) (upholding state law claim for wrongful discharge based on refusal to place unseaworthy vessel in service) . In addition, Congress has recognized that a ship owner may not discharge a master or other supervisory employee for reporting violations of Coast Guard regulations. 46 U.S.C. § 2114(a).

The rule barring state claims that directly conflict with basic maritime principles may at times present a fine line in its application. *See American Dredging Co.*, 510 U.S. at 452-53, 114 S.Ct. at 987-88, 127 L.Ed.2d at 296-97 ("It would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernible...."). We conclude that no fundamental tenet of substantive maritime law is frustrated by the state law retaliatory discharge claims that the Clements are advancing in the present case.

The defendants have conceded for purposes of this appeal that Iowa law recognizes a cause of action for termination of an employee in a manner that offends against public policy. Brief for Appellees at 40. In *Smuck v. National Management Corp.*, 540 N.W.2d 669, 672 (Iowa App. 1995), the court of appeals held that termination based on a refusal to violate federal law would be contrary to public policy. Because the district court's ruling was based on a theory that federal law governed the rights of the parties to the exclusion of state law, the merits of the Clements' state law claims were not adjudicated in that court and are not now before this court. Because we conclude that the state law claim is not precluded by federal law, it must now be considered on its merits. The judgment of the district court is therefore reversed and the case remanded to that court for that purpose.

REVERSED AND REMANDED.

All justices concur except Lavorato, J., who takes no part.

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

BYRON P. CLEMENTS AND MARK CLEMENTS,	No. LACV5269
Plaintiffs,	COURT ORDER
VS.	
GAMBLERS SUPPLY AND MANAGEMENT COMPANY, and SODAK GAMING IOWA INC. also known as SODAK GAMING, INC.,	Filed 98 Sep 22 PM 2:51
Defendants.	

Hearing held with counsel September 22, 1998 on the Motion for Summary Judgment filed by defendants on July 31, 1998.

The Motion for Summary Judgment is **GRANTED** and the petitions at law filed by both plaintiffs are **DISMISSED** at their costs because:

1. There is no genuine dispute regarding the material facts on the issue of applicability of maritime law. The vessel is licensed and inspected by the coast guard, it is docked adjacent to the main channel of the Mississippi River, where it takes on passengers, and it cruises in the main channel of the river when it leaves port. Plaintiffs' own claims are based on alleged violations of federal maritime regulations. Both plaintiffs are "seamen", despite the fact that their job duties include some non-maritime tasks. See *Pfeiffer v. Welland*, 226 N.W.2d (Iowa 1975) and *McDermott Int'l Inc. V. Wilander*, 498 U.S. 337, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991).

2. Federal maritime law does not recognize a claim for wrongful termination of a seaman's employment who was discharge for refusing to violate safety regulations. See *Feemster v. BJ-Titan Services Co./Titan Services, Inc.*, 873 F.2d 91 (5th Cir. 1989); *Garrie v. James L. Gray, Inc.*, 912 F.2d 808 (5th Cir. 1990); and *Meaige v. Hartley Marine Corp.*, 925 F.2d 700 (4th Cir. 1991).

DONE AND ORDERED:
September 22, 1998

/S/
John Bauercamper
Judge

IN THE SUPREME COURT OF IOWA

No. 48 / 98-1817

ORDER

BYRON P. CLEMENTS and **MARK W. CLEMENTS,**

Appellants,

vs.

Filed May 15, 2000
Clerk Supreme Court

GAMBLERS SUPPLY MANAGEMENT COMPANY and **SODAK GAMING IOWA, INC.** a/k/a **SODAK GAMING, INC.,**

Appellees.

After consideration by the court, en banc, appellee's Petition for Rehearing in the above-captioned case is hereby overruled and denied.

Dated this 15th day of May, 2000.

THE SUPREME COURT OF IOWA

_____/s/_____
Arthur A. McGiverin, Chief Justice

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§ 3313. Compliance with certificate of inspection.

(a) During the term of a vessel's certificate of inspection, the vessel must be in compliance with its conditions, unless relieved by a suspension or an exemption granted under section 3306(e) of this title

(b) When a vessel is not in compliance with its certificate or fails to meet a standard prescribed by this part or a regulation prescribed under this part –

(1) the owner, charterer, managing operator, agent, master, or individual in charge shall be ordered in writing to correct the noted deficiencies promptly;

(2) the Secretary may permit any repairs to be made at a place most convenient to the owner, charterer, or managing operator when the Secretary decides the repairs can be made with safety to those on board and the vessel;

(3) the vessel may be required to cease operating at once; and

(4) if necessary, the certificate shall be suspended or revoked.

(c) The vessel's certificate of inspection shall be revoked if a condition unsafe to life that is ordered to be corrected under this section is not corrected at once.

(d) The owner, charterer, managing operator, agent, master or individual in charge of a vessel whose certificate has been suspended or revoked shall be given written notice immediately of the suspension or revocation. The owner or master may appeal to the Secretary the suspension or revocation within 30 days of receiving the notice, as provided by regulations prescribed by the Secretary.

§ 8101. Complement of Inspected vessels.

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on –

(1) a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel;

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit; and

(3) a tank vessel shall consider the navigation, cargo handling, and maintenance functions of that vessel for protection of life, property, and the environment.

(b) The Secretary may modify the complement, by endorsement on the certificate, for reasons of changed conditions or employment.

(c) A requirement made under this section by an authorized official may be appealed to the Secretary under prescribed regulations.

(d) A vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.

(e) When a vessel is deprived of the service of a member of its complement without the consent, fault, or collusion of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel, the master shall engage, if obtainable, a number of members equal to the number of those of whose services the master has been deprived. The replacements must be the same or higher grade or rating than those whose places they fill. If the master finds the vessel is sufficiently manned for the voyage, and replacements are not available to fill all the vacancies, the vessel may proceed on its voyage. Within 12 hours after the vessel arrives at the

destination, the master shall report in writing to the Secretary the cause of each deficiency in the complement. A master failing to make the report is liable to the United States Government for a civil penalty of $1,000 for each deficiency.

(f) The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of $10,000.

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel to which this part applies or which is subject to inspection under chapter 33 of this title if the individual is not licensed by the Secretary. A person (including an individual) violating his subsection is liable to the Government for a civil penalty of not more than $10,000. Each day of a continuing violation is a separate offense.

(h) The owner, charterer, or managing operator of a freight vessel of less than 100 gross tons, a small passenger vessel, or a sailing school vessel not manned as required by this section is liable to the Government for a civil penalty of $1,000. The vessel also is liable in rem for the penalty.

(i) When the 2 next most senior licensed officers on a vessel reasonably believe that the master or individual in charge of the vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel, the next most senior master, mate, or operator licensed under section 710(c)(1) or (3) of this title shall –

(1) temporarily relieve the master or individual in charge;

(2) temporarily take command of the vessel;

(3) in the case of a vessel required to have a log under chapter 113 of this title, immediately enter the details of the incident in the log; and

(4) report those details to the Secretary –

(A) by the most expeditious means available; and

(B) in written form transmitted within 12 hours after the vessel arrives at its next port.

Subpart 91.45 – Repairs and Alterations

§ 91.45-1 Notice required.

(a) No repairs or alterations affecting the safety of the vessel with regard to the hull, machinery, or equipment, shall be made without the knowledge of the Officer in Charge, Marine Inspection.

(b) Drawings of alterations shall be approved before work is started unless deemed unnecessary by the Officer in Charge, Marine Inspection.

(c) Drawings will not be required for repairs in kind.

§ 91.45-5 Inspection required.

(a) An inspection either general or partial depending upon the circumstances shall be made whenever any important repairs or alterations are undertaken.

§15.515 Compliance with certificate of inspection.

(a) Except as provided by §15.725, no vessel may be operated unless it has in its service

and on board the complement required by the certificate of inspection.

(b) Any vessel subject to inspection under 46 U.S.C. 3301 must, while on a voyage, be under the direction and control of an individual who holds an appropriate license issued by the Coast Guard. For the purposes of this paragraph:

(1) A voyage is the period of time necessary to transit from the port of departure to the final port of arrival.

(2) A port does not include an Outer Continental Shelf (OCS) facility as defined in 33 CFR part 140.

Subpart 110.25 – Plan Submittal

§110.25-1 Plans and information required for new construction.

The following plans, if applicable to the particular vessel, must be submitted for Coast Guard review in accordance with §110.25-3:

NOTE: A Navigation and Vessel Inspection Circular on the Subject of "Coast Guard Review of Merchant Vessel Plans and Specifications" is available from the offices listed in §110.25-3. The

Circular recommends practices and procedures for plan submittals.

(a) Elementary one-line wiring diagram of the power system, supported, by cable lists, panelboard summaries, and other information including –

(1) Type and size of generators and prime movers;

(2) Type and size of generator cables, bus-tie cables, feeders, and branch circuit cables;

(3) Power, lighting, and interior communication panelboards with number of circuits and rating of energy consuming devices;

(4) Type and capacity of storage batteries;

(5) Rating of circuit breakers and switches, interrupting capacity of circuit breakers, and rating or setting of overcurrent devices;

(6) Computations of short circuit currents in accordance with Subpart 111.52; and

(7) Overcurrent protective device coordination analysis for each generator distribution system of 1500 kilowatts or above that includes selectivity and shows that each overcurrent device has an interrupting capacity sufficient to interrupt the maximum asymmetrical short-circuit current available at the point of application.

(b) Electrical plant load analysis including connected loads and computed operating loads for each condition of operation.

(c) Elementary and isometric or deck wiring plans, including symbol lists, and manufacturer's name and identification of each item of electric equipment, of each:

(1) Steering gear circuit and steering motor controller;

(2) General alarm system;

(3) Sound powered telephone system;

(4) Power operated boat winch;

(5) Fire detecting and alarm system;

(6) Smoke detecting system;

(7) Electric watertight door system;
(8) Fire screen door holding system;
(9) Emergency loudspeaker system;
(10) Manual alarm system; and
(11) Supervised patrol system.

Each isometric or deck wiring plan must show the location of any cable splice.

(d) Deck wiring or schematic plans of power systems and lighting systems, including systems and lighting systems, including symbol lists, with manufacturer's name and identification of each item of electric equipment, and showing:

(1) Locations of cables;
(2) Cable sizes and types;
(3) Locations of cable splices.

(e) Switchboard writing diagram.

(f) Switchboard material and nameplate list.

(g) Elementary wiring diagram of metering and automatic switchgear.

(h) Description of operation of propulsion control and bus transfer switchgear.

(i) For vessels with hazardous locations as defined in Subpart 111.105 of this chapter, plans showing the extent and classification of all hazardous locations. Information including manufacturer's name, model identification, and equipment location must be submitted for all electrical equipment in these hazardous locations.

(j) Plans and installation instructions for each intrinsically safe system approved by Underwriters Laboratories Inc., Factory Mutual Research Corporation, or other independent laboratory recognized by the Commandant (see §111.105-11).

(k) Motor starter elementary wiring diagram, enclosure drawing, and starter application.

(l) Plans and information sufficient to evaluate equipment required by this subchapter to be approved or accepted by the Commandant.

NOTE: This equipment includes soundpowered telephones, navigation lights, submerged cargo pump motors, and equipment to be considered for equivalency under §110.20-1 of this part.

(m) Plans and information sufficient to evaluate equipment or systems required to meet the

specifications of this Subchapter but not to be approved by the Commandant.

NOTE: This equipment evaluation is generally done by District Merchant Marine Technical Offices and includes cable splices, signaling lights, shore connection boxes, electric oil immersion heaters, submersible motor-driven bilge pumps, engine order telegraph systems, shaft speed and thrust indicator systems, rudder angle indicators, and steering failure alarm systems.

(n) Plans and information sufficient to evaluate equipment required by this subchapter to meet a reference standard or military specification.

NOTE: This equipment evaluation is generally done by District Merchant Marine Technical Offices and includes circuit breakers, switches, lighting fixtures, electric cooking equipment, motor operated appliances, dishwashers, refrigerators, water coolers, air heating equipment, busways, and outlets and junction boxes. Items that are required to meet a UL standard will be considered acceptable based on indication of listing or labeling on a material list or plan. Items required by this subchapter to meet an IEEE, NEMA, or ANSI standard, or a military specification will be considered acceptable if manufacturer's certificate of compliance is indicated on a material list or plan.